

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

May 10, 2006

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In the Matter of  
Town Farm Road Realty, Inc.

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Docket No. 2006-017  
File No. PAN-CE-06-5D001  
Brookfield

**RECOMMENDED FINAL DECISION**

This matter is an appeal of a Notice of Intent to Assess a Civil Administrative Penalty (Penalty Assessment Notice or “PAN”) for one thousand six hundred and twenty four dollars (\$1,624) issued by the Department to Town Farm Road Realty Inc. for alleged violations of the requirements applicable to public drinking water systems. More specifically, the PAN asserts violations of 310 CMR 22.16A(16), failure to file an annual consumer confidence report and certification with the Department for two years (2002 and 2003), and 310 CMR 22.16A(1) and (21), failure to provide those same reports to the customers of the Town Farm Road Realty Inc. drinking water system as required.

On April 14, 2006 MassDEP filed a Motion for Summary Decision pursuant to 310 CMR 1.01(11)(f) upholding the PAN arguing that there is no genuine issue as to any material fact and that the agency is entitled to a final decision in its favor as a matter of law. The Department’s Motion is supported by the Affidavit of Elizabeth Kotowski, an environmental analyst with the MassDEP drinking water program.

The adjudicatory hearing rules at 310 CMR 1.01(11)(f) provide that:

When a motion for summary decision is made and supported ... a party opposing the motion may not rest upon the mere allegations or denials of said party's pleading, but must respond by affidavits or as otherwise provided in 310 CMR 1.01, setting forth specific facts showing that there is a genuine issue for hearing on the merits. If a party does not respond, summary decision, if appropriate, shall be entered against the party.

The petitioner did not file any response to the Department's motion and therefore has not met its obligation to come forward with evidence to contest the motion. I therefore recommend dismissal of this appeal for failure to prosecute as provided in 310 CMR 1.01(10), making the Penalty Assessment Notice final.

### **NOTICE**

This decision is a recommended final decision of the Presiding Officer. It has been transmitted to the Commissioner for his final decision in this matter. This decision is therefore not a final decision subject to reconsideration under 310 CMR 1.01(14)(e), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's final decision is subject to the rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this recommended final decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in his sole discretion directs otherwise.

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.

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Ann Lowery  
Presiding Officer

*Adopted by Commissioner Robert W. Golledge, Jr., May 15, 2006.*